BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

COMMENTS OF MEDIA GENERAL CABLE OF FAIRFAX COUNTY, INC. ON THE THIRD NOTICE OF PROPOSED RULEMAKING

Media General Cable of Fairfax County, Inc. ("Media General") submits these comments to the First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, MM Docket No. 92-266 (FCC 93-428, released August 27, 1993) ("Rate Reconsideration").

Media General is convinced that the Commission's tentative proposal that "... cable operators should be required to elect either the benchmark or the cost-of-service approach for all regulated tiers" is fundamentally wrong. Rate Reconsideration at ¶ 148. The rationale given for this tentative conclusion was that such uniformity is necessary to protect "... tier neutrality and also [eliminate] any incentive to 'game' the regulatory process." Id. at ¶ 149. The Commission expressly recognized that "the Rate Order did not explicitly state whether [a] cable operator is permitted to choose the

cost-of-service approach for one tier and [the] benchmark approach for the other tier...." Id. at ¶ 146. Media General read 47 C.F.R. § 76.922(b), as the Commission properly suggested that a rational reader might, as permitting "... cable operators to elect one showing on one tier and another showing on another tier." Id. The rates that were published for Media General on August 31, 1993, were based on precisely this approach, assuming benchmark rates for the basic tier of service and cost-of-service justified rates for the second tier of service. The freedom to set rates in this fashion ought not to be limited. None of the rationales for a contrary conclusion advanced in the Rate Reconsideration order is persuasive.

The notion of "gaming" the regulatory process can be protected against by more limited regulatory constraints. As we understand it, the harm to be avoided is the possibility that systems will achieve supra-competitive profits in a benchmark-priced basic tier of service by limiting the offerings on that tier to a small number of the least expensive programming choices available on the system.1/ There is a simple safeguard against this occurrence. If the

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1/ Because benchmark per-channel rates are established as an average of revenues per subscriber per channel on all regulated channels of the sampled systems used by the Commission to establish these rates, the result feared is analytically possible. Precisely because the services on upper tiers are generally more costly to provide than the average cost of basic tier services, a system could have basic tier costs significantly below the benchmark rates.

cost-of-service showing for a system seeking to justify upper tier rates also establishes that the benchmark rate of the basic tier is at or below the cost of service for that tier, the Commission's fears will be allayed. In order to be clear that the cost-of-service demonstration for the upper tier has properly attributed joint and common costs, the Commission will be obliged to examine the proportion of total system costs assigned to the basic tier of service. Because this proof will be an inevitable part of the second tier cost-of-service justification, there will be no additional burden on the adjudicative process to establish that the benchmark-based basic tier rates are at or below the cost of service to that tier.

Indeed, if a cable system has elected to utilize cost of service or benchmark treatment for both its tiers, the determination of the Commission on such matters as costs per channel, allocation of costs between tiers and other costs included as elements of the rate base should be binding on the local jurisdiction. If the cable system has elected to utilize different rate methodologies for different tiers, e.g., benchmark for its basic tier and cost of service for its programming services tier, then cable system filings with the Commission showing costs per channel, allocation of costs between tiers and costs as elements of the rate bases which are not rejected by the Commission should be presumptively reasonable when considered by the local franchising authority.

Nor will the approach that we advocate violate the precepts of "tier neutrality" in any important way. Indeed, the "all or nothing" approach to cost-of-service justification tentatively endorsed by the Commission is likely to do more damage to the Commission's hopes for a healthy complement of basic service offerings at an easily affordable price.

One must begin analysis with the recognition that, at least in the context of a cost-of-service proceeding,[2/] there are provable total system costs of providing cable service. And, as we have established in a prior filing,[3/] a cable operator has a fundamental economic and constitutional right to recover those costs. The issue, for cable systems such as Media General that have more than one tier of regulated service, is how those costs should be divided among subscribers who choose different service offerings. In Media General's case, the costs of providing second tier programming[4/] are higher than the comparable programming costs for the basic tier. The notion of "tier neutrality" endorsed by the Commission in its

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2/ The analysis that guided the Commission's determinations concerning benchmark rates was based on prices, not costs. Thus, cost-of-service proceedings which, by definition, disclose information additional to that which was available in the Commission's benchmark analysis must proceed from a fundamentally different perspective.

3/ Reply Comments of Media General Cable of Fairfax County, Inc., MM Docket No. 92-266, September 14, 1993.

4/ We have no objection to allocating costs common to all tiers of service, such as embedded plant, on a tier-neutral basis. Costs that are caused in equal measure by every channel of regulated service ought to be borne in equal measure by each channel of regulated service.

benchmark procedures -- an equal price per channel without regard to variations in cost per channel -- would have the perverse effect in circumstances such as those faced by Media General of obliging those subscribers who take only basic tier service to subsidize the higher cost services offered to those who subscribe to the second tier as well. That outcome is obviously unfair to basic service subscribers and it irrationally curtails the exercise of business judgment by cable system operators. It also would be contrary to Congressional and franchise authority intent to facilitate access to cable services by lower-income citizens. If operators wish to minimize the cost of basic tier service, recovering the high cost of services provided on the second tier from those who choose to subscribe to it, the Commission should not stand in the way of this business judgment. The outcome cannot be said to injure either basic-only subscribers, who are assured by the process that we have described of not paying more than the cost to the system of providing basic service or those subscribers who value the benefits of also subscribing to the second tier sufficiently to pay the greater cost associated with that service. If the Commission genuinely wants for its regime of rate regulation to mimic the effects of

a competitive economy, the possibility of this outcome is imperative, for it is the one that the market would dictate.

Respectfully submitted,

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September 30, 1993